UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

file 4.1

Site: New Bedford
Break: 4.1
Other: ______

SDMS DocID 000200154

Mr. Steven C. Davis
Assistant Secretary of Environmental Impact Review
Executive Office of Environmental Affairs
100 Cambridge Street, 20th Floor
Boston, Massachusetts 02202

ATTN: MEPA Unit--EOEA NO. 6722

Dear Mr. Davis:

The Environmental Protection Agency has reviewed the Draft Environmental Impact Report (DEIR) for the proposed Palmer's Cove development located in New Bedford, Massachusetts by the Old New Bedford Waterfront Corporation.

Corps of Engineers permits under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act are required for a number of the proposed activities at the project site. The activities under federal jurisdiction include:

1. The placement of dredged or fill material below the mean high water line and landward extent of wetlands at the site including the six areas of Phragmites australis identified on the site;

2. The proposed dredging of 116,000 cubic yards of sediments from New Bedford Harbor in order to create the proposed -8'MLW basin for the 640 slip marina.

3. Piers, floats, ramps and piles for the proposed marina facilities.

The EPA will review any proposed federal permit application when a public notice is issued by the Corps of Engineers. The proponent, the Old New Bedford Development Corporation, has requested that EPA provide comments based on the DEIR plan, so that our concerns may be addressed in the Final Environmental Impact Report. We are not able to provide detailed comments at this time as we have not performed an inspection of the property. Our comments provided below, therefore, should be considered as preliminary and subject to revision as we obtain more information.

WETLANDS

The DEIR identifies that 2,700 square feet of Bordering Vegetated Wetland primarily vegetated with Phragmites australis will be

CONCURRENCES

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filled for the proposed waterfront park and residential development under the current design. The DEIR also identifies that six isolated areas of Phragmites australis ranging in size from 3,100 square feet to 22,000 square feet will be filled for the development of the project. The DEIR did not attempt to evaluate the proposed filling of wetlands in regard to compliance with the requirements of the EPA 404(b)(1) guidelines. The total area of wetlands regulated under Section 404 of the Clean Water Act and proposed to be filled has not been provided in the DEIR. Further information concerning how any proposed wetland fill is believed to comply with the requirements of the EPA 404(b)(1) guidelines should be provided for our review.

We cannot comment on the appropriateness of the proposed wetland fill or the proposed salt marsh enhancement program at this time based on the limited information presented in the DEIR and our lack of first hand knowledge of the site. The plans provided in the DEIR concerning cut and fill areas were difficult to understand. For instance, how much area of coastal beach or mud flat is proposed to be filled? How much mud flat or coastal beach area is proposed to be dredged? What alternatives to the dredging or filling of intertidal areas and wetlands were considered? We would also like additional information to be supplied concerning the existing habitat value of the intertidal zone at the project site.

The proposed salt marsh enhancement program may be currently designed to displace an existing mud flat habitat. If this is so, the intended value of the enhancement program is decreased by the substitution of one productive habitat for another. An alternative design for compensation of "unavoidable fills" in the wetland areas, could be to create a larger freshwater marsh to handle runoff from the developed portions of the site. This possibility should be explored, as it would eliminate concerns related to the potential long term contamination of the new salt marsh with PCB contaminated sediment coming from upstream sources.

We will provide additional comments concerning wetland fill and any intended compensation after a Corps public notice is issued and we inspect the site.

DREDGING

The EPA is concerned that the proposed 116,000 cubic yards of dredged material may not have been adequately sampled and analyzed in order to determine appropriate dredging and disposal technologies. We do not believe that the limited bulk sediment analysis provided in the DEIR is adequate to define that only 11,460 cubic yards of the proposed dredged material is contaminated with PCB's and metals. Redistribution of "clean" dredged material for enhancement of the salt marsh and coastal

beach could contain levels of PCB and possibly other contaminants at levels of concern. Because of this concern, the proponent should be required to retest sediments proposed for redistribution on the site, to assure the safety of the public and estuarine resources.

We do not support the envisioned disposal of the identified 11,460 cubic yards of "contaminated material" inside cofferdam structures to be used for solid fill pier supports for the proposed marina. We are concerned for the long-term stability of these structures and believe there are environmentally preferable methods to dispose of the contaminated sediment. In addition, the proposed cofferdam structures also would result in a permanent loss of some bottom habitat which could be avoided by alternative pile supported piers and alternative upland disposal of the contaminated sediment.

Upland disposal of the contaminated (not hazardous) sediments is considered environmentally preferable to the permanent displacement of aquatic resources that would result from the cofferdam disposal technique. Section 230.10 (a) of the EPA 404(b)(1) guidelines requires an evaluation of alternatives which would minimize harm to the aquatic ecosystem.

In addition, we do not believe that the proposed method of dredging by a sealed gasket clamshell dredge is a suitable method of dredging the contaminated sediments at the site. Alternative methods of dredging and disposal need to be further evaluated. The New Bedford Harbor Superfund Study has evaluated various types of dredging equipment for use in the harbor clean up. As a result of these studies, specialized hydraulic dredging equipment has been selected for use in a Pilot Study as this equipment would resuspend the least amount of the contaminants in the sediment at the dredge site. EPA is concerned that your proposed use of a clam shell dredge, even one equipped with a watertight gasket, would result release PCB contaminated sediments to the water column contributing to pollution off site.

We believe the best course of action for dredging and disposal of sediments at this site would be to use specialized hydraulic dredging equipment, similar to that proposed for the Superfund Pilot Study, with disposal in an upland Confined Disposal Facility (CDF). If any dredging and disposal is to occur at the site we recommend that disposal of the identified silts containing PCB's occur first within an upland CDF with subsequent dredging of the cleaner sandy material to confine the contaminated sediments. The disposal site can then be paved for parking or landscaped for park use.

The development of the Packer Marine Terminal at the North Terminal in New Bedford used a Confined Disposal Facility constructed on the upland for disposal of dredged material

contaminated with PCB. Sediments were filtered prior to any release of return water to the harbor by the use of hay bales, silt fence, and a sand filter berm. In addition the effluent was monitored to determine compliance with water quality standards.

CONFLICTING USES OF THE SITE

The EPA is also concerned that the proposed intensive development at the site conflicts with the greater public need to provide for upland disposal facilities for dredged material from the Acushnet River Estuary. Only a limited number of options exist for the disposal of non hazardous dredged material, (less than 50 ppm of PCB) or the hazardous dredged material, (greater than 50 ppm of PCB) that exist in the harbor and estuary. This site was the subject of several prior studies related to the New Bedford Superfund Study. In a June 1984 report prepared for EPA by NUS Corporation entitled "Initial Evaluation of Potential Disposal Sites for Contaminated Dredge Materials" this site was considered for the disposal of approximately 238,000 cubic yards of dredged material. A draft report prepared for EPA in November 1986 by Ebasco Services, Inc. identified this site as potentially able to accommodate 390,740 cubic yards of dredged material if the site was elevated to +10'MSL.

Other then Superfund, it is important to note that the City of New Bedford Harbor Development Commission, under a permit from the Corps of Engineers issued in 1985, (for the retention of unauthorized fill and development of the North Terminal), was required by a special permit condition to investigate and ultimately implement the construction and operation of a disposal site for non-hazardous dredged materials. The City has not yet secured a site for this important use and is therefore in violation of this special condition of the Corps Permit.[1]

The EPA believes that both MEPA and the Corps should be mindful of the broader issues related to disposal of material dredged from New Bedford Harbor and the Acushnet River estuary. The development of the remaining near shore upland areas of the Acushnet River estuary, can have serious adverse ramifications for dredged material disposal needs and solutions in the future. If development eliminates the potential upland alternatives for disposal of non-hazardous and hazardous dredged materials then the remaining options may center around permanent destruction and loss of aquatic habitat within the estuary.

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[1] We do not consider here yet another potential competing use of the site by the City of New Bedford for the construction of a secondary wastewater treatment plant. This will be the subject of a separate EIR/EIS currently under preparation.

If these aquatic oriented disposal options are environmentally unacceptable because of concerns for the protection of wetlands and other aquatic resources, then dredging and disposal may not be able to occur within the estuary. This may preclude some options under the Superfund project or sharply increase the costs of cleanup over what it would be if upland nearshore disposal sites were available. Alternatively, it may mean that a significant portion of the natural values of the estuary will be permanently lost if disposal sites are selected which require the permanent loss of aquatic habitat.

In the overall public interest context, we believe that the best use of this site is for dredged material disposal. Moreover, we also believe that this use does not have to interfere with or prevent the ultimate development of a marina facility and park development at the site. The intended 640 slip marina, however, and the almost complete development of the uplands at the site for 968 residential units, two restaurants, a 50-room guest inn and marine related retail shops appears to be too intense of a development for the site.

ALTERNATIVES

We believe the no dredge alternative was dismissed too quickly in the DEIR. The proponent states that the 82 slips that could be accommodated at the site without dredging is too small to make the project economically viable. Yet the DEIR provided no basis for this determination. Because of concerns related to the potential adverse impacts of dredging and disposal at the site for the proposed marina and residential development, we believe the FEIR should require additional consideration of a no dredging scenario, reduced dredging and development scenario, and a overall reduced development project. In addition, as discussed above we think it makes sense to consider multiple uses at the site involving dredged material disposal (CDF development) with later limited development.

The disposal alternatives evaluated on pages 140 -141 were very limited. We see no reason why a site assignment approval from the DEQE should be viewed as an obstacle to be avoided or an excuse not to pursue upland disposal of contaminated dredged material. Packer Marine used this option at their North Terminal facility and we understand the Gear Locker has proposed a similar dredging and upland disposal for their marina on Popes Island. The disposal of dredged material from the Route 6 bridge replacement project by the MADPW will also likely have to utilize upland disposal and obtain a DEQE site assignment.

The consideration for disposal behind a bulkhead also appears to have been inadequate. Bulkheads do not have to be sited along the natural shoreline, therefore destroying salt marsh and the natural character of the site. A bulkhead disposal facility

could be located further landward to maintain a natural shoreline. Uplands containing clean sediments could be excavated to provide additional capacity for dredged material disposal.

Please call Edward Reiner of my staff at 617-565-4434 if additional coordination is needed in this matter.

Sincerely,

Douglas A. Thompson, Chief
Wetland Protection Section

cc: Laura Eaton, USFWS, Concord, NH
Sue Mello, NMFS, Woods Hole, MA
Jay Copeland, MA NHP, Boston, MA
William Lawless, NEDACE, Waltham, MA
Judy Perry, MA DWPC, Boston, MA
Pam Resor, MACC, Medford, MA
Ron Manfredonia, Chief WQB, EPA
Ann Williams-Dawe, EPA RRC-2203
Frank Ciavattieri, EPA, HAN-CAN2
Bradford O. Saunders, Sasaki Associates, Inc, Watertown, MA